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15 Attorneys for Defendant  
16 ABBYY USA SOFTWARE HOUSE, INC.

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

ABBY USA SOFTWARE HOUSE,  
INC.

Plaintiff,

vs.

NUANCE COMMUNICATIONS, INC.

Defendant.

Case No: CV 08-1035 MEJ

**FIRST AMENDED COMPLAINT**  
**DEMAND FOR JURY TRIAL**

1 Plaintiff Abbyy USA Software House, Incorporated (“Abbyy USA”) brings  
2 this First Amended Complaint against defendant, Nuance Communications,  
3 Incorporated, (“Nuance”) as follows:

4 ***JURISDICTION AND VENUE***

5 1. This is an action for a declaratory judgment that U.S. Patent Nos.  
6 5,131,053 (“the ’053 patent”); 5,381,489 (“the ’489 patent”); 5,436,983 (“the ’983  
7 patent”), 6,038,342 (“the ’342 patent”); and 5,261,009 (“the ’009 patent”)  
8 (collectively “the patents-in-suit”) are invalid and not infringed by any device  
9 made, used, offered for sale or sold by Abbyy USA. This action arises under the  
10 patent laws of the United States, 35 U.S.C. § 271 et seq. and the declaratory  
11 judgment statute, 28 U.S.C. § 2201 et seq., and is based upon an actual justiciable  
12 controversy between the parties with respect to alleged infringement and invalidity  
13 of the ’053, ’489, ’983, ’342 and ’009 patents. This action also arises under the  
14 Sherman and Clayton Acts.

15 2. This Court has exclusive jurisdiction over this action pursuant to 28  
16 U.S.C. §§ 1338(a), 2201 and 2202.

17 3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1391 and  
18 1400.

19 ***THE PARTIES***

20 4. Plaintiff, Abbyy USA, is a California corporation having a principal  
21 place of business at 47221 Fremont Boulevard, Fremont, California 94538.

22 5. Upon information and belief, Defendant, Nuance, is a Delaware  
23 corporation having a principal place of business at 1 Wayside Road, Burlington,  
24 Massachusetts.

25 ***ACTUAL CONTROVERSY WITHIN THIS COURT’S JURISDICTION***

26 6. Abbyy USA is in the business of selling OCR software in this judicial  
27 district.

28 7. Nuance is doing business in this judicial district and elsewhere

1 throughout the United States by, inter alia, offering and selling optical character  
2 recognition and other software. Nuance has asserted, and continues to assert, in this  
3 judicial district and elsewhere that it is the owner of the '053, '489, '983, '342 and  
4 '009 patents, that the '053, '489, '983, '342 and '009 patents are valid, and that the  
5 '053, '489, '983, '342 and '009 patents are infringed by certain printer products  
6 made, used, offered for sale and/or sold by Abbyy USA in this judicial district and  
7 elsewhere. True and correct copies of the '053, '489, '983, '342 and '009 patents  
8 are attached as Exhibits A through E, respectively.

9       8. For example, in a Complaint filed by Nuance on January 16, 2008, in  
10 the U.S. District Court for the Western District of Wisconsin (Civil Action No. 08-  
11 C-0042-S) ("the Wisconsin Action"), Nuance alleged, inter alia, with respect to  
12 each of the '053, '489, '983, '342 and '009 patents that "Abbyy USA has infringed  
13 and is continuing to infringe one or more claims of the [] patent, directly,  
14 contributorily and/or by inducement, by making, using, selling and/or offering to  
15 sell in this country, and/or importing into this country, devices for performing  
16 optical character recognition in violation of 35 U.S.C. § 271." Although Nuance  
17 recently filed a Notice of Dismissal in the Wisconsin Action, that dismissal was  
18 without prejudice and Nuance has not withdrawn its allegations of infringement,  
19 leaving Abbyy USA in apprehension of further suit.

20       9. Nuance has asserted rights under the '053, '489, '983, '342 and '009  
21 patents based upon certain identifiable ongoing activity of Abbyy USA (including  
22 the activities of Abbyy USA identified by Nuance in the Wisconsin Action,  
23 above), and Abbyy USA contends that it has the right to engage in the accused  
24 activity without license under the '053, '489, '983, '342 and '009 patents.  
25 Nuance's threats of infringement with respect to the '053, '489, '983, '342 and  
26 '009 patents continue against Abbyy USA, and as a result of Nuance's above acts,  
27 Abbyy USA is apprehensive that Nuance will again file suit against Abbyy USA  
28 for infringement of the '053, '489, '983, '342 and '009 patents.

1           10. Accordingly, there is an actual present justiciable controversy as to  
2 infringement of the '053, '489, '983, '342 and '009 patents by Abbyy USA, and as  
3 to the validity of these patents.

4                                   ***FIRST CLAIM FOR RELIEF***

5                           **(Declaratory Judgment Of Non-Infringement And**  
6                           **Invalidity Of U.S. Patent No. 5,131,053)**

7           11. Abbyy USA incorporates by reference paragraphs 1-10, above.

8           12. Abbyy USA has not infringed, and is not infringing, literally or under  
9 the doctrine of equivalents, any valid and enforceable claim of the '053 patent  
10 directly, indirectly, contributorily or by inducement.

11           13. Upon information and belief, and subject to further investigation, one  
12 or more of the claims of the '053 patent are invalid because they fail to satisfy one  
13 or more of the conditions for patentability under Title 35 of the United States  
14 Code, including inter alia sections 101, 102, 103 and/or 112.

15           14. Accordingly, Abbyy USA seeks a judgment of this Court declaring  
16 that Abbyy USA has not infringed and is not infringing any claim of the '053  
17 patent, and that one or more claims of the '053 patent are invalid.

18                                   ***SECOND CLAIM FOR RELIEF***

19                           **(Declaratory Judgment Of Non-Infringement And**  
20                           **Invalidity Of U.S. Patent No. 5,381,489)**

21           15. Abbyy USA incorporates by reference paragraphs 1-14, above.

22           16. Abbyy USA has not infringed, and is not infringing, literally or under  
23 the doctrine of equivalents, any valid and enforceable claim of the '489 patent  
24 directly, indirectly, contributorily or by inducement.

25           17. Upon information and belief, and subject to further investigation, one  
26 or more of the claims of the '489 patent are invalid because they fail to satisfy one  
27 or more of the conditions for patentability under Title 35 of the United States  
28 Code, including inter alia sections 101, 102, 103 and/or 112.

1 18. Accordingly, Abbyy USA seeks a judgment of this Court declaring  
2 that Abbyy USA has not infringed and is not infringing any claim of the '489  
3 patent, and that one or more claims of the '489 patent are invalid.

4 ***THIRD CLAIM FOR RELIEF***

5 **(Declaratory Judgment Of Non-Infringement And**  
6 **Invalidity Of U.S. Patent No. 5,436,983)**

7 19. Abbyy USA incorporates by reference paragraphs 1-18, above.

8 20. Abbyy USA has not infringed, and is not infringing, literally or under  
9 the doctrine of equivalents, any valid and enforceable claim of the '983 patent  
10 directly, indirectly, contributorily or by inducement.

11 21. Upon information and belief, and subject to further investigation, one  
12 or more of the claims of the '983 patent are invalid because they fail to satisfy one  
13 or more of the conditions for patentability under Title 35 of the United States  
14 Code, including inter alia sections 101, 102, 103 and/or 112.

15 22. Accordingly, Abbyy USA seeks a judgment of this Court declaring  
16 that Abbyy USA has not infringed and is not infringing any claim of the '983  
17 patent, and that one or more claims of the '983 patent are invalid.

18 ***FOURTH CLAIM FOR RELIEF***

19 **(Declaratory Judgment Of Non-Infringement And**  
20 **Invalidity of U.S. Patent NO. 6,038,342)**

21 23. Abbyy USA incorporates by reference paragraphs 1-22, above.

22 24. Abbyy USA has not infringed, and is not infringing, literally or under  
23 the doctrine of equivalents, any valid and enforceable claim of the '342 patent  
24 directly, indirectly, contributorily or by inducement.

25 25. Upon information and belief, and subject to further investigation, one  
26 or more of the claims of the '342 patent are invalid because they fail to satisfy one  
27 or more of the conditions for patentability under Title 35 of the United States  
28 Code, including inter alia sections 101, 102, 103 and/or 112.

26. Accordingly, Abbyy USA seeks a judgment of this Court declaring that Abbyy USA has not infringed and is not infringing any claim of the '342 patent, and that one or more claims of the '342 patent are invalid.

***FIFTH CLAIM FOR RELIEF***

**(Declaratory Judgment Of Non-Infringement  
And Invalidity Of U.S. Patent No. 5,261,009)**

27. Abbyy USA incorporates by reference paragraphs 1-26, above.

28. Abbyy USA has not infringed, and is not infringing, literally or under the doctrine of equivalents, any valid and enforceable claim of the '009 patent directly, indirectly, contributorily or by inducement.

29. Upon information and belief, and subject to further investigation, one or more of the claims of the '009 patent are invalid because they fail to satisfy one or more of the conditions for patentability under Title 35 of the United States Code, including inter alia sections 101, 102, 103 and/or 112.

30. Accordingly, Abbyy USA seeks a judgment of this Court declaring that Abbyy USA has not infringed and is not infringing any claim of the '009 patent, and that one or more claims of the '009 patent are invalid.

***SIXTH CLAIM FOR RELIEF***

**(Actual Monopolization in Violation of § 2 of the Sherman Act)**

31. Abbyy USA incorporates by reference paragraphs 1-30, above.

32. Over the last several years, electronic storage and exchange of documents has proliferated. One of the reasons for the growth in electronic documents is the development of imaging software which converts paper originated documents into electronic data. The growth of the Internet and e-mail has resulted in a rapid expansion of the market for software to manage the electronic exchange of information.

33. At all times material hereto, Nuance has been dominant in the market for imaging software in the geographic market of the United States. Nuance

1 software has been sold directly to consumers, home offices, small businesses and  
2 Original Equipment Manufacturers (OEMs).

3 34. Nuance sells and licenses imaging software to a number of large  
4 OEMs, which bundle the software with multifunction devices such as printers and  
5 scanners.

6 35. Nuance also sells and licenses its imaging software to other software  
7 companies for various office applications.

8 36. Nuance has enhanced its dominance of these software markets by  
9 acquiring competitors and patents, so that the markets would have fewer  
10 competitors.

11 37. Nuance also has used its dominate position in these software markets  
12 to stabilize prices and exclude competition, all to the detriment of the consuming  
13 public.

14 38. Nuance has engaged in the following predatory acts, all with the  
15 purpose of stabilizing prices and/or excluding competition:

16 (a) entered into exclusive contracts with retail outlets in an  
17 attempt to foreclose the number of outlets available to  
18 competitors' products;

19 (b) sought to reach agreement with competitors on pricing so  
20 that Nuance could raise prices without regard to market  
21 pressure;

22 (c) acquired and sought to acquire competitors to reduce  
23 supply and raise prices;

24 (d) threatened competitors and customers of competitors  
25 with increased litigation; and

26 (e) acquired patents covering OCR technology, with the  
27 purpose of substantially lessening competition in software  
28

1 markets.

2 39. All of said predatory conduct by Nuance was done with the intent of  
3 enhancing Nuance's market share, increasing Nuance's market power, and  
4 excluding competition, so that Nuance could charge higher prices, all to the  
5 detriment of the consuming public.

6 40. At times material hereto, Nuance has had in excess of 70% of the  
7 product market of Full Text OCR software in the geographic market of the United  
8 States. This market share has given Nuance market power in Full Text OCR  
9 software products.

10 41. Nuance has used its market power to engage in actual monopolization  
11 of the Full Text OCR software market through the above-referenced predatory acts  
12 and has exerted control over the prices of Full Text OCR software products by  
13 excluding competition.

14 42. Nuance's actual monopolization has resulted in stabilized prices for  
15 Nuance's Full Text OCR software, all to the detriment of the consuming public.

16 43. Through the above-referenced acts, Nuance has directly and  
17 proximately damaged the business and property of Abbyy USA, by, among other  
18 things, eliminating Abbyy USA as a potential and actual competitor in certain  
19 retail outlets, all to the detriment of Abbyy USA's business and property.

20 ***SEVENTH CLAIM FOR RELIEF***

21 **(Attempted Monopolization in Violation of § 2 of the Sherman Act)**

22 44. Abbyy USA incorporates by reference paragraphs 1-43, above.

23 45. At certain times materials hereto, and in certain geographic sub-  
24 markets within the United States, Nuance has had less than enough market power  
25 to actually monopolize these markets. In these cases, Nuance has attempted to  
26 monopolize the market for Full Text OCR software products by engaging in the  
27 aforementioned conduct and predatory acts.

28 46. Nuance has manifested a specific intent to monopolize the market for

1 Full Text OCR software products.

2 47. There is a dangerous probability that Nuance will successfully achieve  
3 monopoly power in the market for Full Text OCR software products in those  
4 markets where it has not achieved actual monopolization.

5 48. Nuance's conduct in attempting to monopolize the market for Full  
6 Text OCR software products has resulted in stabilized prices, all to the detriment  
7 of the consuming public.

8 49. Through the above-referenced acts, Nuance has directly and  
9 proximately damaged the business and property of Abbyy USA, by, among other  
10 things, eliminating Abbyy USA as a potential and actual competitor, all to the  
11 detriment of Abbyy USA's business and property.

12 ***EIGHTH CLAIM FOR RELIEF***

13 **(Contracts in Restraint of Trade - § 1 Sherman Act Violation)**

14 50. Abbyy USA incorporates by reference paragraphs 1-49, above.

15 51. Nuance has entered into exclusive dealing contracts with retailers  
16 whereby the retailer is prohibited from selling, marketing and/or displaying  
17 competitors' OCR software products.

18 52. Said exclusion of OCR software, including Abbyy USA software, has  
19 had an anticompetitive effect on United States commerce by restricting the supply  
20 of OCR software and rendering Nuance as the only seller of OCR software in  
21 certain retail outlets. Said restriction has affected the public interest by limiting  
22 choice and supply in the market for OCR software products.

23 53. Said exclusion of OCR software products, including those of Abbyy  
24 USA, has resulted in damage to the business and property of Abbyy USA.

25 ***NINTH CLAIM FOR RELIEF***

26 **(§ 7 Clayton Act Violation)**

27 54. Abbyy USA incorporates by reference paragraphs 1-53, above.

28 55. Using assets acquired through acquisitions, Nuance has engaged in

conduct, which has had the effect of substantially lessening competition in certain relevant markets, including the market for Full Text OCR software products.

56. In 2000, Nuance acquired Caere Corporation (“Caere”). This acquisition included the acquisition of patented OCR technology. Following Nuance’s acquisition of Caere and its OCR patent portfolio, Nuance engaged in conduct such as that alleged above, which has had the effect of eliminating capacity for the production of software with a resulting stabilizing of prices all to the detriment of the consuming public.

57. Nuance’s conduct as alleged above has directly and proximately caused Abbyy USA to lose customers and potential customers, all to the damage of Abbyy USA’s business and property, and has damaged the consuming public.

### **PRAYER FOR RELIEF**

WHEREFORE, Abbyy USA requests the following relief:

A. Judgment declaring that Abbyy USA has not infringed and will not infringe, directly or indirectly, by inducing or contributory infringement, any valid or enforceable claim of the ‘053 patent;

B. Judgment declaring that the claims of the ‘053 patent are invalid;

C. Judgment declaring that Abbyy USA has not infringed and will not infringe, directly or indirectly, by inducing or contributory infringement, any valid or enforceable claim of the ‘489 patent;

D. Judgment declaring that the claims of the ‘489 patent are invalid;

E. Judgment declaring that Abbyy USA has not infringed and will not infringe, directly or indirectly, by inducing or contributory infringement, any valid or enforceable claim of the ‘983 patent;

F. Judgment declaring that the claims of the ‘983 patent are invalid;

G. Judgment declaring that Abbyy USA has not infringed and will not infringe, directly or indirectly, by inducing or contributory infringement, any valid or enforceable claim of the ‘342 patent;

1 H. Judgment declaring that the claims of the '342 patent are invalid;

2 I. Judgment declaring that Abbyy USA has not infringed and will not  
3 infringe, directly or indirectly, by inducing or contributory infringement, any valid  
4 or enforceable claim of the '009 patent;

5 J. Judgment declaring that the claims of the '009 patent are invalid;

6 K. A declaration that this case is exceptional within the meaning of 35  
7 U.S.C. § 285 and an award of reasonable attorney fees and costs;

8 L. An award of damages incurred by Abbyy USA proximately caused by  
9 the anticompetitive conduct of Nuance;

10 M. A tripling of the damages found to be due Abbyy USA;

11 N. An award of Abbyy USA's reasonable attorneys' fees;

12 O. Abbyy USA's costs, disbursements, and other expenses; and

13 P. Such other relief as the Court deems appropriate.

14 Dated: June 4, 2008

FOLEY & LARDNER LLP  
GRANT E. KINSEL

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18 By: /s/ Grant E. Kinsel  
GRANT E. KINSEL  
19 Attorneys for Defendant  
20 Abbyy USA Software House, Inc.  
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1 Abby USA Software House, Inc. hereby demands a trial by jury.

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3  
4 Dated: June 4, 2008

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